

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**

LULA WILLIAMS, *et al.*,

Plaintiffs,

v.

BIG PICTURE LOANS, LLC, *et al.*,

Defendants.

Civil Action No.: 3:17-cv-00461-REP

**REQUEST FOR EXPEDITED RULING ON BIG PICTURE LOANS, LLC AND
ASCENSION TECHNOLOGIES, LLC'S
MOTION TO STAY PENDING APPEAL AND
SUPPLEMENTAL MOTION TO STAY ALL PROCEEDINGS PENDING APPEAL**

Big Picture Loans, LLC (“Big Picture”) and Ascension Technologies, LLC (“Ascension”) (collectively, the “Tribal Defendants”), by counsel, and pursuant to Local Rule 7(E), hereby submit this request for an expedited ruling and/or hearing on their pending Motion to Stay Pending Appeal (Dkt. No. 137) and Supplemental Motion to Stay All Proceedings Pending Appeal (Dkt. No. 198).

1. On June 26, 2018, the Court denied the Tribal Defendants’ Motion to Dismiss for Lack of Subject Matter Jurisdiction. (Dkt. No. 124.) The Tribal Defendants timely appealed that order on July 17, 2018, *see* Dkt. No. 135, and that appeal remains pending before the United States Court of Appeals for the Fourth Circuit.

2. On July 20, 2018, the Tribal Defendants moved to stay all proceedings before this Court pending the outcome of their appeal, including on the bases that: (1) this Court and the co-parties lacked jurisdiction over the Tribal Defendants due to the pending appeal on the issue of

sovereign immunity; and (2) a stay was otherwise warranted as a matter of discretion. (*See generally* Dkt. No. 138.) That Motion was fully briefed as of August 9, 2018.¹

3. On July 25, 2018, the Court held its initial pretrial conference and held off setting any deadlines in the case for the Tribal Defendants in light of their pending appeal. (ECF No. 147, 25:2-4: “Now, remember that at this juncture, you’re only dealing with Mr. Martorello. You are not dealing with the defendants who filed a notice of appeal.”). The Court, however, set class certification deadlines and a trial date as to co-Defendant Matt Martorello.

4. On October 2, 2018, the Tribal Defendants filed a Supplemental Motion to Stay All Proceedings Pending Appeal of the Court’s June 26, 2018 Order. That Supplemental Motion was fully briefed as of October 29, 2018 (with further briefing on Plaintiffs’ Motion to Strike Reply in Support of Supplemental Motion to Stay being completed as of November 15, 2018).

5. On October 17, 2018, at the initial pretrial conference in the related case of *Galloway v. Big Picture Loans, LLC*, Civil Action No. 3:18cv406, this Court stated on the record that it would be ruling on the pending Motions to Stay in this action by the end of the following week (*i.e.*, by October 26, 2018). To date, no decisions have been issued on either Motion to Stay.

6. There is now pending before this Court a motion for class certification, which has been fully briefed by Plaintiff and by co-Defendant Martorello; however, given their pending appeal, the Tribal Defendants have not participated in that briefing, nor will they participate in the trial against co-Defendant Martorello, set for March 2019.

7. The Tribal Defendants will be prejudiced if, for example, this Court grants the pending class certification motion and the Fourth Circuit later affirms this Court’s decision denying them sovereign immunity. Thus, the Tribal Defendants face the possibility of being required to

¹ Co-Defendant Matt Martorello also moved to stay proceedings, and his motion was fully briefed as of August 2018 but also has not been decided. (*See* Dkt. No. 140.)

participate in a class action case in this Court, without having been heard on the class certification issue. Decisions made in connection with the March 2019 trial of co-Defendant Martorello could likewise prejudice the Tribal Defendants in the event the Fourth Circuit affirms this Court's decision denying them sovereign immunity.

8. Since the initial pretrial conference in *Galloway*, Plaintiffs' counsel has issued written discovery requests to Big Picture and Ascension in *Galloway*, see **Exhibit A**, and they have also issued more than 75 subpoenas in *Williams* and in *Galloway* seeking to discover information about the Tribal Defendants' loan data and business activities. See **Exhibit B**. Those subpoenas have been issued to dozens of state attorneys general, banks, software companies, credit reporting agencies, creditors, attorneys and law firms, and virtually anyone else they can identify all with the singular purpose of obtaining information about Big Picture's loans.

9. Plaintiffs' counsel also proceeded to depose a former Ascension officer about his role at Ascension, and they have also deposed Matt Martorello. The Tribal Defendants did not participate in those depositions due to the lack of jurisdiction over them and concerns over waiver of immunity.

10. With trial quickly approaching, Matt Martorello has had no choice but to serve several Rule 45 subpoenas on The Tribal Defendants seeking information to prepare his defense, and fifteen subpoenas in that regard have been served on the Tribal Defendants during the past two weeks. See Ex. B.

11. Matt Martorello has also deposed the named Plaintiffs. The Tribal Defendants did not participate in those depositions due to the lack of jurisdiction over them and concerns over waiver of immunity.

12. For the reasons above, the Tribal Defendants respectfully request that the Court: (1) issue an immediate ruling and/or conduct a prompt hearing on their pending Motions to Stay; and (2) award them such further relief as the Court deems appropriate.

**BIG PICTURE LOANS, LLC
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CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of December 2018, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will then send a notification of such filing (NEF) to the following:

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